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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 146th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 April 1993, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Spain (continued) (CAT/C/17/Add.10)

1. At the invitation of the Chairman, Mr. Borrega Borrega (Spain) took a place at the Committee table.

2. Mr. BORREGA BORREGA (Spain) thanked the members of the Committee for their interest in his country's report and for their questions. Spain, despite its relatively recent accession to democracy, had already ratified many international instruments, including the most important ones relating to human rights; the importance of acceding to international instruments and facilitating their adoption in domestic legislation was reflected in the country's Constitution. He was somewhat surprised, however, as a national of a democracy possessing an impartial legal system, that an international body such as the Committee should adopt an approach which seemed, from the outset, unfavourable towards police forces and other agents of the authorities; surely the presumption of innocence prior to proof to the contrary applied to all.

3. In the preparation of Spain's supplementary report, efforts had been made to reflect the Committee's comments on the format and content of the initial report. With regard to the Convention's application in Spanish domestic law, any form of degrading or harsh treatment inflicted as punishment was deemed torture and punished accordingly; the documentation supplied to the Committee contained a list of relevant offences and sentences established under criminal law, which, together with national jurisprudence, reflected the provisions of article 204 of the Constitution and the concept of torture enunciated at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Spanish authorities appreciated the Committee's concerns in the light of the provisions of article 1 of the Convention, and it was hoped that those concerns would be duly reflected in a new bill shortly to be drafted in Spain. In any case, there was no problem in Spain arising from deeds of the sort envisaged in that article.

4. With regard to incommunicado detention, a distinction should be made between ordinary offences and organized crime, including drug trafficking and terrorism. In that connection, the European Court of Human Rights recognized the specific nature of terrorism. Normally, the maximum permissible period of such detention in Spain was 72 hours. The person detained was informed of all his rights, such as the rights to silence, to the services of a lawyer and of a doctor if appropriate, and, if an alien, to communication with the relevant consulate and to the services of an interpreter if required. The detainee signed a document to the effect that all his rights had been explained to him. No interrogation could take place until the detainee's lawyer was present.

5. In the case of an offence attributed to organized crime, a person might be detained for up to five days; even so, a judge must be requested, during the first 48 hours, to authorize that extension. Incommunicado detention was ordered only for suspected drug traffickers and terrorists; in such cases, the judge might be asked to authorize solitary confinement, and was entitled to

demand further information about the circumstances and the person concerned. In cases of incommunicado detention, the detainee's relatives were not contacted, and the right to a lawyer of his choice not exercised until a judge had been informed. Even so, a duty lawyer specializing in cases of drug trafficking or terrorism was present from the outset. In addition, the judge's order for incommunicado detention was available to the media. In practice, such orders were lifted on the second or third day of detention in most cases. Any doctor chosen by a detainee produced an entirely independent report.

6. The complex problems faced in such cases should not be overlooked. Two lawyers were currently on trial in Spain charged with acting as go-betweens for a terrorist organization, and a third was facing trial on charges of receiving ransom money. Drug trafficking was a major problem in Spain, which served as a point of entry into Europe. Irrespective of the nature of the alleged offence, however, the rights of all persons arrested were fully respected, and all cases of detention were under a judge's supervision. Spain was currently seeking, in the Council of Europe, to introduce wording into a draft bill of rights for detainees, to reflect the provisions of article 520 of the Spanish Penal Code, since in some member countries the rights of detainees were not as comprehensive as in Spain. Further details could be provided in writing to the Committee if it so desired.

7. Spain's prison system was governed by a number of basic regulations stemming from the Constitution, organic prison law, international instruments, the Civil and Penal Codes, and other sources; the system was fully described in a book which he would make available to the Committee. Spain's prison regime was one of the world's most advanced. One of its provisions, not available elsewhere in Europe, was that no penalty could be imposed on a prisoner if any action was pending which involved the prison authorities. The General Secretariat for Prison Affairs acted constantly to eradicate all possibilities of ill-treatment of prisoners and to bring any such cases to light; the Office of the People's Advocate, which had hitherto received only two complaints in that regard, had commented favourably on the speed and efficacy of the General Secretariat's work. One reason for its excellent record was the fact that the Spanish prison regime was in keeping with the highest international standards.

8. The dispersal to separate prisons of detained members of armed gangs was a policy which international bodies such as the European Court of Human Rights had recognized as a right that national authorities could exercise if they saw fit.

9. Article 24 of the Spanish Constitution prohibited unjustified delays in bringing to trial officials charged with torture and ill-treatment; Spain thus observed the relevant requirements of the Convention, as well as of the European Convention on the Protection of Detainees from Torture and from Cruel, Inhuman or Degrading Treatment or Punishment. The remedies available in Spain also included recourse to amparo and, subsequently, to international instances. Compensation for abnormal delays in the administration of justice was a right established under article 121 of the Constitution, and under

article 292 of the relevant Organization Act. However, there had not been a single complaint about delay in the administration of justice relating to allegations of torture.

10. With regard to pardons granted in respect of acts of torture, such pardons did not imply any complicity or condonation by the authorities in regard to the misdemeanours of officials. In one case involving certain members of the Guardia Civil, a pardon had been granted on account of the period of 12 years which had elapsed since the occurrence, and pursuant to the policy of social reintegration; nevertheless, the officials concerned had been dismissed from their duties, although not deprived of their freedom.

11. The allegations made by Amnesty International, and referred to by the Country Rapporteur, relating to an incident in Ibiza had involved injury to a civilian and a member of the Guardia Civil in a scuffle which had occurred after two persons had ignored a request to open a bag and then refused to accompany officers to a police station. The affair clearly constituted resistance to arrest; nevertheless, an inquiry was being conducted into the possibility of harsh treatment by the police and would be dealt with speedily by the Office of the Public Prosecutor.

12. The alleged case of ill-treatment by police officers in Benidorm on 23 May 1992 had involved a disturbance caused by five British rugby supporters, who had damaged property and assaulted a number of police officers; five supporters and five policemen had been injured. The local Public Prosecutor's Office had found grounds for charging only one of the supporters; and one officer of the local police force was alleged to have used excessive force. The case was continuing.

13. The allegations by Amnesty International relating to alleged ill-treatment of trade-unionists by members of the Guardia Civil in Mallorca in May 1992 related to two persons who had seemingly abused the legal right to engage in peaceful picketing and had resorted to threats and physical violence. They had been taken to a Guardia Civil station, where one of them was alleged to have been seriously assaulted by a sergeant. The two persons concerned had been detained on 28 and 29 May 1992 - two days only, not longer as alleged. One of them had been charged with offences punishable by two months' detention and the sergeant with an offence punishable by up to three years' imprisonment.

14. Mr. Ben Ammar had referred to a statement regarding the bill containing a new Penal Code. In that connection, any violation of the privacy of correspondence was very serious, particularly if a letter was misappropriated. In no circumstances was a public official allowed to exceed his sphere of competence; performance of duty could not be claimed in such a case as advantage had been taken of the defencelessness of the detainee. The penalty imposed was therefore more severe than that laid down for the same act committed by a private individual.

15. Mr. Ben Ammar had also asked whether a person arrested had to certify that he had been informed of his rights. That was done on two occasions; first, when the detainee was taken to the police station, he was informed of his rights, signed the appropriate form and indicated whether he wanted his

own or an official lawyer. During the initial questioning, a lawyer was required to be present and the detainee's rights were again read out to him.

16. Regarding the problem of refugees and illegal immigrants, Spain's geographical location encouraged many illegal immigrants to seek asylum. Spain had a law on asylum and a law on foreigners; the latter was one of the most progressive in Europe. There had been no problems or cases involving racism or torture involving immigrants or foreigners. The European Commission of Human Rights had congratulated Spain on its speedy handling of the relevant procedures in a case of harsh treatment of refugees of Central African origin.

17. Illegal immigrants into Spain were dealt with in such a way that the dignity of the individual was fully respected. If the right of asylum was not granted, such individuals were returned to their country of origin. In practice, many of them destroyed their identity papers, claiming that they came from a particular country. Two police officers then accompanied the individual on a flight to that country. Airlines permitted only one person to be accompanied on each flight home, so that it was not possible for the authorities to repatriate four or five illegal immigrants on a single flight. The process was therefore very expensive. If the individual on arrival at the destination was not accepted because the authorities alleged that he was from elsewhere, the police would then accompany him to that other country; that process could go on indefinitely until in some cases the group finally had to return to Spain.

18. Mr. Ben Ammar had also inquired about publication of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Spain. Publication was awaiting a political decision by the Spanish Council of Ministers. In his view, the current trend of thinking would favour publication.

19. As the Chairman had indicated, in trials involving members of the security forces, one and the same body could not both investigate the matter and pass judgement. The inquiry judge would carry out the investigation and, when he had reached a conclusion, the matter could then go to the courts of appeal and cassation.

20. Article 21 of the Basic Law for the Protection of Citizens was controversial, particularly its paragraph 2. That article stipulated that security agents and forces could raid a house only in cases permitted under the terms of the Constitution and the relevant law, which stipulated that those carrying out the raid must be in possession of a warrant, except in cases where drugs were involved. In such cases speed was essential because evidence could be destroyed very quickly. Because Spain was a young democracy, the Spanish legal system made great efforts to guarantee human rights, and even parliamentary laws were scrutinized by an independent authority to ensure such guarantees.

21. Mr. Ben Ammar had also asked who supervised respect for human rights and ensured that torture or harsh treatment did not take place. The answer was that there were five levels of supervision, namely: the police or security officer, who must comply with article 5 of the Organic Law, as indicated in the report. The second level was represented by the lawyer, without whose

presence no questioning could take place. Third, a doctor was automatically called in by the security forces, by the accused or by the lawyer. Fourth, it was the duty of the officer or public prosecutor to ensure full respect for human rights. The fifth level of supervision was represented by the judge. Five levels of control therefore existed to ensure that the human rights of the accused were respected and that there could be no torture or harsh treatment. It was thus virtually impossible for an alleged case of maltreatment to escape investigation.

22. Mr. Gil Lavedra had commented on confessions obtained under torture. Courts attached no value to statements obtained under torture and other evidence was required for a conviction. That was what had happened in a court decision of 15 April 1991, where a conviction had been based on other evidence not related to the extortion of a confession by prison officers.

23. Mr. Burns had asked about cases involving punishment or injuries inflicted on detainees and whether the European Commission of Human Rights had any such cases before it. There had been one case in which prison officers had been penalized for harsh treatment. No complaints had reached the European Commission from any terrorist or drug groups. The notion of delay had not been invoked. Suspension of sentence in cases where the penalty was less than one year was not automatic and required a decision by a judicial body. In one case a member of the Guardia Civil had been sentenced to four months' imprisonment but the judicial body had ordered that the sentence should be carried out.

24. Mr. Burns had also asked whether, because Spain had emerged from an authoritarian regime, there might be a presumption of guilt rather than innocence concerning the activities of the police. There had been one case in which several security officers had been imprisoned for ill-treatment of prisoners. It should be noted, however, that it was the Bar Association which appointed the lawyers, and not the court.

25. He would like to reassure the Committee that his Government was continuing to make contributions to the United Nations Voluntary Fund for Victims of Torture.

26. Mr. Mikhailov had referred to cases of ill-treatment of prisoners. In that connection prison officials, members of the Guardia Civil, doctors and others were given human rights courses, especially concerning the prohibition of torture. There was a document available in English, French and Spanish informing prisoners what their rights were, including their right to speak to the prison lawyer on any matter of concern. He himself had participated in many such courses.

27. Mr. Ben Ammar had expressed concern about medical attention in prisons and the activities of judges in connection with prison supervision. The issue of health care was set out in articles 138 et seq. of the Prisons Act. Every prison had at least a doctor, a health officer and auxiliary staff, as well as a dental expert. Prisoners were given a full medical examination by doctors on entry, and a test for AIDS, if they requested it. Prisoners could seek

medical check-ups whenever they considered it necessary. Examination of prisoners in the nude was prohibited, as that represented humiliating treatment.

28. Solitary confinement must be in a cell with the same characteristics as all other cells in the institution; punishment cells were prohibited. The medical director checked the physical and mental health of prisoners in solitary confinement daily. Such punishment was suspended in the event of illness and was not imposed on pregnant women or women who had children with them in prison.

29. A further question from Mr. Ben Ammar had referred to different standards applied by different judges. It was true that certain judges, in particular the judge for prison supervision in Barcelona, took a tough line and in general opposed conditional release. Others were more lenient. The issue was controversial, in particular because crimes such as rape had assumed critical proportions in Spain. It must be stressed that the independence of judges was strictly respected.

30. In reply to the Chairman, he would like to say that Spanish law was very thorough on the issue of State responsibility and indeed went to extremes. For example, the State would be responsible if a police officer on holiday got drunk and caused damage. Another case in which the State had accepted full responsibility was one in which floods, caused by torrential rain, had caused a dam to burst.

31. The CHAIRMAN thanked the representative of Spain for his detailed answers to the questions which had been raised. If there were no further questions, the public meeting would be suspended while the Committee held a brief closed meeting to discuss its conclusions.

32. Mr. Borrega Borrega (Spain) withdrew.

The first part (public) of the meeting rose at 4.25 p.m.